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June 4, 1998

**BY HAND DELIVERY**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: **EX PARTE PRESENTATION**  
**In the Matter Of: Communications Assistance for Law Enforcement Act**  
**CC Docket No. 97-213**

Dear Ms. Salas:

On June 3, 1998, representatives of the Department of Justice and Federal Bureau of Investigation ("the Department") met with representatives of the Federal Communications Commission ("the Commission") to discuss matters related to the Commission's Public Notice released on April 20, 1998 in the above-referenced matter — specifically, issues surrounding the deadline for compliance with the obligations of the Communications Assistance for Law Enforcement Act. The Department of Justice was represented by Daniel Kaplan and Stephen Preston. The Federal Bureau of Investigation was represented by Lisa Osofsky, Joanne Pasquarelli, Michael Warren, and Dave Yarbrough. The Commission was represented by Susan Aaron, Jim Burtle, Diane Conley, Charles Iseman, Tim Maguire, Tejal Mehta, Kim Porter, Kelly Quinn, Rodney Small, and David Wye.

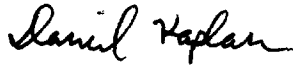
At the meeting, the parties discussed issues surrounding the compliance date specified in § 111(b) of the Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994). The Department discussed its general understanding of the current state of affairs with regard to compliance efforts in the telecommunications industry. The parties also discussed the Commission's options with regard to extending the compliance period. The Department distributed a set of "Possible Forbearance Terms" to the Commission representatives, following up on the suggestion made in the Department's May 8 and May 15 filings in this matter that such agreements be negotiated with industry participants; these "Possible Forbearance Terms" are attached to this letter.

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Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter are enclosed. Copies of this letter are simultaneously being provided to the Commission representatives identified above.

Very truly yours,

A handwritten signature in cursive script that reads "Daniel Kaplan".

Daniel Kaplan  
Attorney, Appellate Staff

cc: Susan Aaron, Jim Burtle, Diane Conley, Charles Iseman, Tim Maguire, Tejal Mehta, Kim Porter, Kelly Quinn, Rodney Small, David Wye

## **Possible Forbearance Terms**

### **Forbearance Period**

1. An appropriate forbearance period will be individually negotiated but will not exceed fourteen months beyond the CALEA capability compliance deadline to December 31, 1999, which represents approximately two years from the date that industry adopted its J-STD-025. This forbearance period will apply to any telecommunications manufacturer that expressly agrees to the terms set forth below and any carrier that is dependent on the equipment of such manufacturer to achieve compliance with CALEA. Aside from the provisions set forth in this agreement, there will be no other agreed upon forbearance periods and no further extensions sought.
2. At the end of this forbearance period, the undersigned manufacturers will have done the following: produced the software and hardware necessary to implement the J-STD-025 and the 'hooks' necessary for future incorporation of all punch-list items; completed First Office Application (FOA) installation and testing of this equipment; and made the equipment Generally Available (GA) for installation by telecommunications carriers. If, during a subsequent proceeding, a manufacturer establishes to the satisfaction of the Federal Communications Commission (the 'Commission') that incorporation of the 'hooks' for individual punch-list items is not "reasonably achievable," the manufacturer may exclude them from their design.

### **Milestones**

3. During the forbearance period, manufacturers and the FBI will be expected to meet certain milestones for making generally available the J-STD-025 and the 'hooks' necessary for future incorporation of all punch-list items. Each undersigned manufacturer and any other manufacturer expressly agreeing to these terms will provide the following information to the Commission and to the Department of Justice (the 'Department') within 30 days of the filing of this comment:
  - A. a definition and full description of what will be completed and supplied to the Department at each milestone;
  - B. the dates by which the manufacturer will meet its milestones;
  - C. the equipment or product lines (e.g. wireline, cellular, PCS) to which the undertakings apply.
4. The milestones are:
  - A. The date by which each manufacturer shall complete detailed specifications based on the J-STD-025, to include a feature specifications document.
  - B. The date by which each manufacturer shall begin integration or system testing of the software and hardware designed to implement J-STD-025.
  - C. The date by which each manufacturer and one of its carrier customers

- shall begin First Office Application (FOA) installation and testing.
- D. The date by which the manufacturer shall begin General Availability (GA) of its J-STD-025 solution, including the 'hooks' necessary for future incorporation of all punch-list items. This date shall be December 31, 1999 or sooner.
5. The manufacturers agree to provide any information that the Department or the Commission requests for the explicit purpose of verifying milestones. If the manufacturer desires, the information may be provided pursuant to a non-disclosure agreement.
6. On or before October 31, 1998, the FBI shall provide to manufacturers an "Acceptance Test Plan," including a generic test script, based on the J-STD-025 and all punch-list items. Should the FCC determine that some of the punch-list items are not required, the appropriate portions of the test script will then be eliminated. This information will also be made available to test equipment manufacturers. If the Department does not meet this milestone, any milestones and deadlines applicable to manufacturers will be extended by a period equivalent to the Department's delay in meeting its milestones. If the manufacturers agree to limit the data delivery to five protocols and utilize a standard delivery terminology, the Department is willing to provide test equipment by a date to be jointly agreed upon by manufacturers and the Department.
7. After GA, manufacturers will offer deployment of their solutions to other carriers by a date jointly agreed upon by manufacturers and the Department which will represent a time which is as quickly as is reasonably possible. Software and hardware will be offered first to those carriers identified by the FBI as having a high priority for receiving this equipment. An additional forbearance period shall be provided as necessary to lower priority carriers.

#### Enforcement of Milestones

8. The milestone dates identified by each manufacturer shall be binding on the manufacturer. If a manufacturer fails to meet a milestone on the pre-established date, fines will begin to accrue at a rate of \$50,000 per day. The accrual of such fines will cease when the manufacturer meets the milestone. If the manufacturer still meets the final deadline, then the accrued fees will be waived and deemed not payable. However, if the manufacturer fails to meet the final deadline, then all previously accrued fines will be due, and additional fines will accrue at the rate of \$50,000 per day until performance is complete. Accrued fines may be applied as a credit against payments or reimbursements that the Department would otherwise provide directly or indirectly to manufacturers for software and hardware related to compliance with CALEA.
9. The parties agree that it will be appropriate to extend the milestone dates or the

final compliance date on the basis of developments beyond the control of the manufacturer that make adherence to the milestone dates impossible, such as fire, hurricane, tornado, acts of God, acts of public enemy, blockades, labor stoppages, riots, disorders, storms, floods, earthquake, lightening, civil disturbances, restraint by court or public authority, inability to obtain any required permits or licenses, boycotts, embargoes, acts of military authority or similar circumstances.

#### Termination Clause

10. Any forbearance period granted to a carrier will terminate if a manufacturer or any person makes a solution commercially available, thus providing a reasonably achievable solution for the carriers, on a date earlier than December 31, 1999. "Reasonably achievable" is defined within the terms of the CALEA statute and shall take into consideration the factors listed in § 109(b)(1). A reasonable installation period after this date is recommended so that carriers could then implement any such solution. In these circumstances, however, if a carrier can demonstrate that the manufacturer upon which it relies has substantially completed a CALEA compliant solution, as demonstrated by being prepared to begin First Office Application, then this agreement will continue in force.